

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9818 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KANTIBHAI NARANBHAI PATEL

Versus

DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 9818 of 2002
MR MC SHAH for Petitioner No. 1-2
MR HC PATEL ASSTT GOVERNMENT PLEADER for Respondent No. 1-2
MR BS PATEL for Respondent No. 3-5
MRS RANJAN B PATEL for Respondent No. 3-5

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/12/2002

ORAL JUDGEMENT

#. Heard learned advocate Mr.M.C.Shah on behalf

of the petitioner and learned advocate Mr.B.S.Patel appearing on behalf of the respondent Nos.3 to 5, so also, learned AGP Mr.H.C.Patel for respondent Nos.1 & 2.

#. Rule. Learned AGP Mr.H.C.Patel and learned advocate Mr.B.S.Patel waive service of RULE on behalf of the respective respondents.

#. The brief facts giving rise to the present petition are as under :-

On date 24th May, 1997, the respondent Nos.4 & 5 have entered into an agreement to sell with the petitioners in respect of the lands bearing Survey Nos.351 and 352 of village Khali, Taluka Sidhpur which are new tenure lands and could not have been agreed to be sold without previous permission of the Collector under the provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 [for short "the Act"]. According to the petitioners, as there were some internal disputes amongst the deemed purchasers, proceedings in the nature of R.T.S. proceedings were initiated. Ultimately, the said proceedings reached the State Government by way of Revision Application [SRD] No.13/97 before the Additional Chief Secretary [Appeals], Revenue Department. The Deputy Secretary [Appeals], Revenue Department by order dated 4th September, 1998 remanded the matter to Mamlatdar and ALT, Sidhpur for holding inquiry under Section 84-C of the Act after hearing all the heirs of Narsinhbhai Hirabhai. Pursuant to the said order dated 4th September, 1998, the Mamlatdar and ALT, Sidhpur initiated the proceedings under Section 84-C of the Act against the petitioners and respondent Nos.3 to 5 and by order dated 30th October, 1999 directed that the lands should be restored to original position within three months and on failure to do so, the lands shall be entered in name of the Government for breach of provisions of Section 43 of the Act. Being aggrieved thereby, the respondent No.3 preferred Appeal being Tenancy Appeal No.2 / 2000 in the Court of Prant Officer, Patan, who in turn, by order dated 30th October, 2000 set aside the order passed by the Mamlatdar and ALT dated 30th October, 1999 and directed that names of all the heirs of Narsinhbhai Hirabhai should be brought on record and after giving opportunity to lead evidence, the proceedings should be held according to the record of rights provisions. Being aggrieved by the said order dated 30th October, 2000 passed by the Prant Officer, Patan, the petitioners preferred Revision Application No.382 / 2000 before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal by order dated 30th December,

2001 rejected the said Revision Application at the preliminary stage on the ground that it has no jurisdiction. According to the petitioners, the only remedy available to the petitioners to challenge the order passed by the Prant Officer, Patan under Section 74 of the said Act, is to challenge the same by way of Revision Application before the Gujarat Revenue Tribunal under Section 76 of the Tenancy Act. Therefore, according to the petitioners, the tribunal has committed error in not entertaining the revision application and decided the same on merits.

#. I have perused the orders passed by the lower authorities and also considered the submissions made by the learned advocates for the parties. The Additional Chief Secretary [Appeals], Revenue Department, State Gujarat has passed the order on 25th August, 1998 / 4th September, 1998 while setting aside the order dated 31st January, 1997 passed by District Collector, Mehsana and confirmed the order passed by the Deputy Collector, Patan dated 25th March, 1996 directing the Mamlatdar, Sidhapur to give reasonable opportunity to legal heirs of Narsinhbhai Hirabhai and to pass appropriate orders in accordance with law. In pursuance of the order passed by the Additional Chief Secretary, as referred above, the Mamlatdar and ALT, Sidhapur has decided the Remand Case by order dated 30th October, 1999 wherein the Mamlatdar has come to the conclusion that to restore original position of the land in question, otherwise, for breach of Section 43, the land in question will be vested with the Government and as per Section 84[C][4] the land will be dealt with accordingly. That said order has been challenged before the Prant Officer, Patan by one Patel Amrutlal Ganeshbhai by way of Appeal being Appeal No.2/2000 wherein the the Prant Officer has set aside the order passed by the Mamlatdar and ALT dated 30th October, 1999 and directed the Mamlatdar to act as per the directions issued by the Deputy Secretary [Appeals] by order dated 25th August, 1998 / 4th September, 1998. In the said order, the Deputy Collector, Patan has committed basic error in mentioning that after reasonable opportunity to all the legal heirs of Narsinhbhai Hirabhai to decide the matter as per the record of rights. This direction created trouble for the petitioner because two separate proceedings are going on between the parties, first under Bombay Land Revenue Code and second under the Tenancy Act. The proceedings under the Bombay Land Revenue Code has been initiated as per the order passed by the Deputy Collector, Patan. The petitioner has challenged this order before the revisional authority i.e. Gujarat Revenue Tribunal but

the revision application has been rejected on preliminary ground that the tribunal has no jurisdiction to examine the question relating to the record of rights. Learned advocate Mr.Shah has submitted that as per the order passed by the Deputy Collector, Patan, separate proceedings under the record of rights under the Bombay Land Revenue Code is required to be initiated by the Mamlatdar, Sidhpur but the petitioner has challenged the order passed by the Deputy Collector, Patan whereby set aside the order of the Mamlatdar dated 30th October, 1999 which was under Tenancy Act and therefore, revision is available to the petitioner under Section 76 of the Tenancy Act.

#. Learned advocate Mr.B.S.Patel has also not disputed this legal position in respect of the orders passed by the Deputy Collector, Patan. Therefore, according to my opinion, two separate proceedings arose from one order passed by the Deputy Collector, Patan, means, one proceeding challenging the order passed by the Deputy Collector, Patan wherein he set aside the order of Mamlatdar and ALT, Sidhpur dated 30th October, 1999 under Section 74 of the Tenancy Act and the second proceeding is required to be initiated by the Mamlatdar, Sidhpur under the Bombay Land Revenue Code to decide the record of rights between the parties. Therefore, both these proceedings are independent seem to have arisen based upon different Acts, no doubt between the parties. Therefore, considering this fact, according to my opinion, the Gujarat Revenue Tribunal has committed error in not appreciating the fact that Deputy Collector, Patan has passed the order setting aside the order of Mamlatdar and ALT, Sidhpur dated 30th October, 1999 under Section 74 of the Tenancy Act, against which, revision application is maintainable under Section 76 of the Tenancy Act. Therefore, the order passed by the Gujarat Revenue Tribunal in Revision Application No.382 / 2000 dated 31st December, 2001 is required to be quashed and set aside.

#. In the result, present petition is allowed. The order passed by the Gujarat Revenue Tribunal in Revision Application No.382 / 2000 dated 31st December, 2001 is hereby quashed and set aside. However, it is directed to the Mamlatdar, Sidhapur to initiate the proceedings under the provisions of the Land Revenue Code to decide the record of rights between the parties within period of two months from the date of receipt of this order. Simultaneously, the Gujarat Revenue Tribunal is also directed to decide the Revision Application No.382 / 2000 preferred under Section 76 of the Tenancy Act in respect

of the order passed by the Deputy Collector, Patan wherein he set aside the order of Mamlatdar and ALT, Sidhapur dated 30th October, 1996 within period of two months from the date of receipt of the order. However, it is observed that it will be open to the respective parties to raise all the legal contentions available under the law before the concerned authorities.

Rule is made absolute with no order as to costs.

Date : 11-12-2002 [H.K.Rathod, J.]

#kailash#